

S.B. Civil Revision Petition No.1491/98
Ramesh Giri Vs. Krishan Chandra Pal & Ors.

Date of Order : 06/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. H.S. Khandelwal for	]	for petitioner
Mr. M.M. Ranjan	]	
Mrs. Namita Parihar for	]	for respondents
Mr. R.C. Joshi	]	

Instant revision petition has been filed by the alleged chela of decree holder against the order dated 22nd July, 1998 whereby the application seeking execution of judgment & decree dated 10th March, 1978 decreed in favour of Shri Rajendra Giri, who was the plaintiff and degree holder, has been rejected by the Executing Court.

The present petitioner while claiming himself to be a chela of decree holder Shri Rajendra Giri and in whose favour judgment and decree was passed in Regular Suit No.13/1974 dated 10/03/1978 sought execution of the judgment and decree which was opposed by the respondents-judgment debtors and in their written objection it was seriously disputed about his status as chela of Shri Rajendra Giri and it was further averred that the present petitioner Ramesh Giri while claiming himself to be a chela of decree holder, filed number of suits on various occasions all were dismissed and in one of the suit filed by him in which Shri Rajendra Giri was also one of the defendant in their reply to the

injunction application, raised additional objections in which it was specifically averred as under :-

"यह कि वादी रमेश गिरी ने अपने आपको राजेन्द्र गिरी का चेला अंकित किया है । बिल्कुल गलत है रमेश गिरी न तो राजेन्द्र गिरी का चेला बल्कि वह गृहस्थी आदमी है और राजेन्द्र गिरी व मठ से कोई संबंध नहीं है।"

The reply filed by Rajendra Giri, on 30/07/88 was exhibited as A/4 before the Executing Court.

The learned Executing Court after taking into consideration material and so also oral testimony of both the parties to the execution application framed two issues. First was whether Ramesh Giri can be considered to be chela and legal representative of Rajendra Giri and issue No.2 was with regard to the effect of dismissal of suit which the present petitioner filed on different occasions and dismissed by the competent court of jurisdiction on the present execution application. After taking note of the material on record, both the issues were decided against the petitioner and the learned Executing Court held that no prima facie material has come forward on which he can be said to be a chela particularly, when he himself i.e. Ramesh Giri has not appeared in the witness box and deposed to claim himself to be chela and accordingly, rejected the execution application by a detailed order impugned in the present revision petition.

Counsel for petitioner submits that the statements of AW-1 to AW-5 were recorded out of which AW-1 and AW-2 were Ex-Sarpanch and other witnesses were residents of Keladevi. All the five witnesses deposed in oral testimony holding the petitioner to be a chela of Shri Rajendra Giri and

when no contrary material has come forward, in such circumstances, the very finding which has been recorded by the learned Executing Court is not supported by legal evidence and requires interference by this court.

Counsel for respondents, on the other hand, has supported the finding recorded by the Executing Court and she further submits that on both the issues the learned Executing Court has considered the complete material and moreso, when the petitioner himself has failed to appear as witness to show that he was chela of decree holder Shri Rajendra Giri, the statement of other witnesses who are not directly or indirectly connected with either of 'Mathh' or otherwise will be of no legal significance and moreso, when the present petitioner filed suit against Shri Rajendra Giri along with application under Order 39 Rule 1 and 2 CPC where he made an averment that he is chela of decree holder of Shri Rajendra Giri which was seriously disputed by him in reply to the application which is evident from the document Ex.A/4 placed on record. In the absence whereof, no error has been committed by the learned Executing Court in rejecting the execution application, filed by the petitioner while claiming himself as his chela and legal representative of decree holder.

I have considered the submissions made by the counsels and with their assistance perused the material available on record.

This fact remained undisputed that the present petitioner had not appeared as a witness at least to establish that he is chela of Rajendra Giri and

supporting statement of those who appeared as witnesses, were Ex-Sarpanch or residents and were not considered directly or indirectly in any manner to show that he was ever made chela of the decree holder Shri Rajendra Giri. In addition to it, when a civil suit was filed by him for permanent injunction impleading the original decree holder as one of the defendants, reply was filed to the application by Shri Rajendra Giri under Order 39 Rule 1 and 2 CPC and specifically it was mentioned by him in additional plea Para 2 which is evident from Ex.A/4 that he never recognized the present petitioner as his chela and the same was filed on 13/07/1988.

The learned Executing Court while examining issue No.1 taking note of the evidence recorded a finding that none of the witness was able to show that whether any formalities which are pre-requisite for one to become a chela was ever fulfilled and apart from it, when the petitioner himself has not appeared to establish of his own that he was chela of Shri Rajendra Giri. Mere averment made in execution application cannot be said to be duly supported by material on record. I do not find any error of jurisdiction or material irregularity in the finding recorded by the learned Executing Court, so far as issue No.1 is concerned.

With regard to issue No.2, the material has come on record to show that on four different occasions the present petitioner filed civil suits for one or other reason claiming himself as chela of Rajendra Giri but they were dismissed for non-prosecution and in one of the suit filed by him, written statement also come on record and the decree holder has seriously disputed his status as his

chela. I do not find any material irregularity committed by the learned Executing Court with regard to the finding recorded in relation to issue No.2.

Consequently, I find no merit in the present revision petition, the same is hereby dismissed. No order as to costs.

[Ajay Rastogi], J.

FRB